



February 25, 2000

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2000-0725

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132462.

The Texas Department of Criminal Justice (the “department”) received a request for information regarding the investigation and discipline of a named inmate. The request seeks eighteen enumerated items described with specificity, including inter-office communications, an offense report, investigative reports and evidence collected, disciplinary reports, grievance forms, an administrative segregation report, a “video tape interview,” and a disciplinary hearing tape. You have provided for our review some information that is responsive to the request. You assert that this information is excepted from public disclosure under sections 552.107, 552.108 and 552.131 of the Government Code. We have reviewed the information you have submitted and considered the exceptions you assert.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, “must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10<sup>th</sup> business day after the date of receiving the written request.” Gov’t Code § 552.301(b). Moreover, “no later than the 15<sup>th</sup> business day after the date of receiving the written request,” the governmental body must submit to the attorney general:

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(B) a copy of the written request for information;

(C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(A), (B), (C), (D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

As to item "C" above, you do not state when the department received the request for information. However, the request document is stamped as "received" on October 12, 1999. We find this constitutes sufficient evidence that the department received the request on October 12, 1999.

As to item "D" above, you do not represent to this office that the information submitted for our review consists of representative samples. As best we can ascertain, you did not submit for our review the documents requested in the requests numbered "1," "2," "3," "14," "15," "16," "17," or "18." Moreover, the request numbered "6" seeks a specified "video tape interview" and the request numbered "9" seeks a specified "disciplinary hearing tape," neither of which have been submitted for our review. *See* Gov't Code § 552.002(b)(4) (information which may be subject to the Public Information Act includes information on tape). Thus, you did not comply with section 552.301(e)(1)(D) with respect to much of the information requested by this requestor.

Additionally, this office did not receive your request for a decision, your arguments for withholding the information, or the responsive information submitted for our review until December 21, 1999, more than fifteen business days after the department received the request. Therefore, absent a compelling reason to withhold the information, the information submitted for our review must be released.<sup>1</sup> Because we believe section 552.131 is intended, in part, to protect third party interests, we will address your section 552.131 assertion with respect to that information you did submit for our review. As to any information responsive to the request which the department holds, owns, or has a right of access, but not submitted

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<sup>1</sup>Because section 552.108 is a discretionary exception, your failure to comply with the requirements of section 552.301 results in a waiver of this exception. *See* Open Records Decision No. 522 at 4 (discussion of discretionary exceptions in general).

to this office for review, we determine you must release such information in its entirety.<sup>2</sup> *See* Gov't Code § 552.002. We remind the department that a governmental body has a good faith duty to relate a request to information which it holds. Open Records Decision No. 561 at 8 (1990).

Section 552.131(a) relating to department inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

In relevant part, section 552.029 states:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

(1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

(2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;

. . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.131 is explicitly made subject to section 552.029. Our review of the information indicates the requested documents pertain to an alleged crime involving an inmate. Accordingly, while the department must generally withhold the submitted information under section 552.131, it must release basic information pursuant to section 552.029. Basic information includes the time and place of the incident, names of inmates and department

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<sup>2</sup>Because this information was not submitted for our review, we are unable to ascertain whether the information is confidential by law. We caution, however, that the Public Information Act prohibits the release of confidential information. *See* Gov't Code § 552.352 (release of confidential information constitutes a misdemeanor).

officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.<sup>3</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

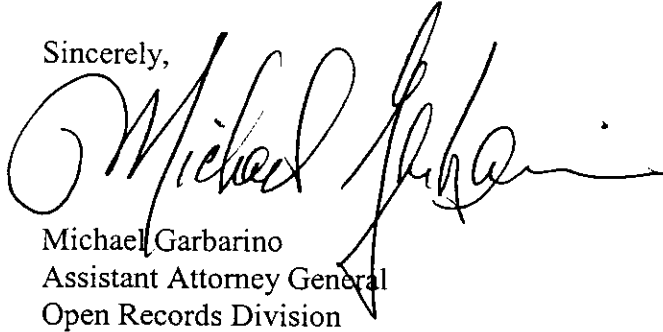
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>3</sup>This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/jc

Ref: ID# 132442

Encl. Submitted documents

cc: Mr. Ramon W. Webster  
20344 West Capri Avenue  
Los Bajos, CA 93635-8500  
(w/o enclosures)